# STATE OF MICHIGAN

# COURT OF APPEALS

MONETREX, INC.,

Plaintiff-Appellant,

v

CHRYSLER GROUP L.L.C.,

Defendant,

and

CAD CAM SERVICES, INC. and BOLHOUSE, VANDER HULST, RISKO, BAAR & LEFERE, P.C.,

Defendants-Appellees.

UNPUBLISHED
April 26, 2012

No. 304191
Kent Circuit Court
LC No. 2010-012859-CK

Before: METER, P.J., and SERVITTO and STEPHENS, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order granting summary disposition in defendants', Cad Cam Services, Inc. and Bolhouse, Vander Hulst, Risko, Baar & Lefere, P.C., favor and dismissing plaintiff's complaint. Plaintiff also appeals the trial court's award of $7,500.00 in sanctions in defendants' favor and against plaintiff pursuant to MCR 2.114(F). Because res judicata did not bar plaintiff's claims, we reverse.

The instant lawsuit arises out of a "factoring" relationship plaintiff had with KSI Machine & Engineering, Inc ("KSI"). Plaintiff "factors" accounts receivable for clients, meaning that businesses (such as KSI) sell one or more of their invoices or accounts receivable concerning monies owed them by a debtor to plaintiff, at a discount, in order to obtain cash. The debtor then pays the factor (here, plaintiff) the full value of the invoice. According to plaintiff, it is additionally granted a security interest in assets of its clients as collateral insuring that it will receive the monies due. In 2009, plaintiff factored certain accounts receivable of KSI, including a specific invoice upon which Chrysler owed payment to KSI. Plaintiff filed a UCC-1 financing statement to perfect its security interest in the account receivable.

Defendant, Cad Cam Services, Inc. (Cad Cam), produces specialty tooling for use in the automobile industry. It apparently sold tooling to KSI and when KSI failed to pay for the same, Cad Cam initiated a lawsuit in Kent County Circuit Court against KSI for the unpaid balance. Upon obtaining a default judgment against KSI, Cad Cam served garnishments on several companies believed to be in possession of money or property belonging to KSI. One of those companies was Chrysler, who was served with a garnishment concerning the invoice upon which it owed payment to KSI and to which plaintiff claims it had factored. Plaintiff filed an objection to the garnishment, but the objection was dismissed by the trial court. Chrysler thereafter remitted payment of the invoice to Bolhouse, Vander Hulst, Risko, Baar & Lefere, P.C., ("Bolhouse"), counsel for Cad Cam, who subsequently distributed the payment to Cad Cam. Plaintiff thereafter filed the instant action, asserting that Chrysler disregarded the known factoring agreement between plaintiff and KSI and improperly paid the other defendants the invoiced amount. Plaintiff also asserted that all defendants converted the invoiced amount by paying the money to someone other than plaintiff.

Prior to being served with the complaint, Chrysler paid the disputed amount to plaintiff. Thus, Chrysler had no real participation in the underlying lawsuit. Upon the remaining defendants' motion (hereafter "defendants"), venue was transferred from Oakland to Kent County. Defendants thereafter moved for summary disposition contending that because plaintiff had previously objected to the Chrysler garnishment in a prior action, on the same basis as set forth in the instant lawsuit, and the trial judge in that lawsuit dismissed the objection upon finding that plaintiff had no claim to the funds, res judicata barred plaintiff's claims. Defendants also asserted that plaintiff failed to state a claim for conversion as a matter of law and requested that sanctions be imposed against plaintiff for initiating a frivolous action. The trial court agreed in all respects, granting summary disposition in defendants' favor pursuant to MCR 2.116(C)(7) and (10) and ordering that plaintiff pay defendants sanctions pursuant to MCR 2.114 in the amount of $7,500.00.

We review de novo motions for summary disposition under MCR 2.116(C)(7) and (C)(10). *Tellin v Forsyth Twp*, 291 Mich App 692, 698; 806 NW2d 359 (2011); *DaimlerChrysler Corp v Wesco Distribution, Inc*, 281 Mich App 240, 244; 760 NW2d 828 (2008). We also review de novo as a question of law the applicability of the doctrine of res judicata. *Washington v Sinai Hosp of Greater Detroit*, 478 Mich 412, 417; 733 NW2d 755 (2007).

Summary disposition under MCR 2.116(C)(7) is appropriate when a claim is barred on the basis of a prior judgment. In reviewing a motion under subrule (C)(7), we accept as true the plaintiff's well-pleaded allegations and construe them in the plaintiff's favor. *Hanley v Mazda Motor Corp*, 239 Mich App 596, 600; 609 NW2d 203 (2000). A motion for summary disposition under MCR 2.116(C)(10) tests the factual support of a claim and should be granted if no genuine issue of material fact exists for trial. *Spiek v Dep't of Transp*, 456 Mich 331, 337; 572 NW2d 201 (1998). In reviewing a motion under subrule (C)(10), we consider the pleadings, affidavits, depositions, admissions and other evidence submitted by the parties in a light most favorable to the nonmoving party. *Walsh v Taylor*, 263 Mich App 618, 621; 689 NW2d 506 (2004).

On appeal, plaintiff first asserts that the trial court erred in concluding that res judicata barred its claims. We agree.

The doctrine of res judicata precludes multiple lawsuits alleging the same cause of action. *Adair v Michigan*, 470 Mich 105, 121; 680 NW2d 386 (2004). The concerns behind res judicata are economy of judicial resources, finality of litigation, and relieving parties of the cost and vexation of multiple lawsuits. *Pierson Sand & Gravel, Inc v Keeler Brass Co.*, 460 Mich 372, 380; 596 NW2d 153 (1999). Application of res judicata requires that (1) the prior action was decided on the merits, (2) the decree in the prior action was a final decision, (3) the matter contested in the second case was or could have been resolved in the first, and (4) both actions involved the same parties or their privies. *Richards v Tibaldi*, 272 Mich App 522, 530-531; 726 NW2d 770 (2006). "This Court has taken a broad approach to the doctrine of res judicata, holding that it bars not only claims already litigated, but also every claim arising from the same transaction that the parties, exercising reasonable diligence, could have raised but did not." *Washington v Sinai Hosp of Greater Detroit*, 478 Mich 412, 418; 733 NW2d 755 (2007).

In its order dismissing plaintiff's objections to the garnishment(s), the prior court stated:

> Monetrex, LLC filed an objection to three garnishments, including the Chrysler garnishment on October 20, 2009. . . . Monetrex apparently entered into a Factoring Agreement with KSI on December 23, 2008 under which KSI was "required to factor all of its invoices with Monetrex." (). Schedule A to this agreement identifies the property secured by it, which includes "[a]ll accounts, receivables, invoices. . . . and other forms or rights and receivables, either now owned by Debtor or hereafter acquired or created, including the proceeds derived therefrom . . . " A UCC filing statement was also filed and includes the same language.
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> Plaintiff alleges Monetrex's objections should be dismissed, at least with respect to the Chrysler garnishment, on procedural grounds. The Court agrees. MCR 3.101(L) and (M) provide the procedures to be followed when an entity claims an interest in a garnishee's property or obligation and it seems Monetrex should follow these provisions. See *People's Wayne County Bank v. Stott*, 246 Mich 540, 542-44 (1929)(recognizing that garnishment statutes are to be strictly complied with).
>
> The procedure is more than a formality here, as the papers before the Court are insufficient to establish whether Chrysler's payment of $12,700 was paid in connection with an accounts receivable encompassed by the Factoring Agreement or whether this supersedes Cad Cam's right to collect on its judgment. The check number, date and amount of the check submitted to plaintiff by Chrysler do not match the information on the Payment Summaries submitted by Monetrex.

*Order*

> Plaintiff's request for dismissal of Monetrex's objection is hereby GRANTED without prejudice to Monetrex to proceed under MCR 3.101(L) or MCR 3.101(M). This is a final order and disposes of the case.

Clearly, there was *a* prior action decided on the merits and the decree in the prior action was a final decision. However, contrary to defendant's assertion otherwise, the prior trial court did not decide the issue presented in the instant matter, i.e., *plaintiff's* right to the account receivable in question, on the merits. The prior trial court framed defendant's argument as specifically alleging that plaintiff's "objections should be dismissed . . . on procedural grounds." The very next sentence reads: "The Court agrees." That the prior trial court was dismissing the objections on procedural grounds is abundantly clear. The language that follows the prior trial court's agreement that the objections should be dismissed was simply the trial court's explanation as to why the requirements of MCR 3.101(L) and (M) are more than mere formalities and require that a party actually intervene in a garnishment action if it believes it has a claim to garnished funds rather than object.

More importantly for res judicata purposes, however, is the fact that plaintiff was not a party to the prior action. It was never named as a party and filed no *pleadings* in the prior action. See MCR 2.110(A). Plaintiff did file objections, which were considered by the prior trial court but which it determined should be dismissed on procedural grounds. The dismissal of the objections was without prejudice to allow plaintiff to proceed under MCR 3.101. Thus, an essential element of res judicata, that "both actions involved the same parties or their privies" (*Richards v Tibaldi*, 272 Mich App at 530-531) is absent.

True, pursuant to MCR 3.101(L)(4), one who claims an interest in garnished funds may move to intervene in the action and plaintiff did not move to intervene in the action. MCR 3.101(L)(4) does not, however, *require* a claimant to intervene. Although it would have been expedient for plaintiff to have attempted that route, the court rule simply states that a claimant *may* intervene. And, the prior trial court's language granting dismissal of plaintiff's objections "without prejudice to Monetrex to proceed under MCR 3.101(L) or MCR 3.101(M)" was not a direct order to plaintiff to intervene in the action. It appears that the language was more in the line of an explanation as to why the dismissal was without prejudice and a limitation upon those actions plaintiff could pursue in the matter. While the trial court found that the prior trial court had ordered plaintiff to intervene in the action and that "the terms of the order mean that plaintiff's dismissal was with prejudice unless addressed in the same case," there is no basis for this finding. Had the prior trial court intended to order plaintiff, then a non-party, to intervene in the action it could have specifically directed that plaintiff file a proper motion within a specified timeframe. Instead, the prior trial court dismissed the objections without prejudice, but still entered its final order disposing of the case, leaving plaintiff with essentially an option of proceeding under MCR 3.101. In any event, because the underlying action did not involve plaintiff as a party or one of plaintiff's privies, res judicata did not serve as a bar to the instant action.

Plaintiff next asserts that the trial court committed reversible error when it dismissed plaintiff's conversion claims. However, an issue is not properly preserved for appellate review when it has not been raised, addressed, and decided by the trial court. *Hines v Volkswagen of America, Inc*., 265 Mich App 432, 443; 695 NW2d 84 (2005); *Polkton Charter Twp v Pellegrom*, 265 Mich App 88, 95; 693 NW2d 170 (2005). Here, because the trial court dismissed plaintiff's complaint against defendants in its entirety on res judicata grounds, it did not address or decide plaintiff's conversion claims. We thus have no trial court decision to review on this issue and, having determined that res judicata does not bar plaintiff's claims, remand to the trial court to consider plaintiff's conversion claims.

Plaintiff next claims that the trial court committed reversible error in awarding sanctions pursuant to MCR 2.114. We review a trial court's determination regarding whether an action is frivolous for clear error. *BJ's & Sons Constr Co, Inc v Van Sickle*, 266 Mich App 400, 405; 700 NW2d 432 (2005). "A decision is clearly erroneous when, although there may be evidence to support it, we are left with a definite and firm conviction that a mistake has been made." *Guerrero v Smith*, 280 Mich App 647, 677; 761 NW2d 723 (2008).

The purpose of imposing sanctions is "to deter parties and attorneys from filing documents or asserting claims and defenses that have not been sufficiently investigated and researched or that are intended to serve an improper purpose." *BJ's & Sons Constr Co, Inc*, 266 Mich App at 405 (internal quotations and citation omitted). In assessing sanctions against plaintiff, the trial court stated, "[s]anctions are also imposed as sought in the amount of $7,500 because, in the opinion of this Court, this matter was wholly without merit." It is unclear from this statement whether the trial court based its award of sanctions on its impression that this matter should have been pursued in the prior action or whether it considered the actual merits of plaintiff's claims and found that the complaint was not well grounded in fact and warranted by existing law or a good faith argument, or that it was interposed for an improper purpose such that it warranted sanctions. See MCR 2.114(D)(2) and (3). Because the current record does not support an award of sanctions, and because the trial court did not address the conversion claims, we reverse and remand the award of sanctions for further consideration.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Patrick M. Meter
/s/ Deborah A. Servitto
/s/ Cynthia Diane Stephens